

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PASQUAL GABRIEL MARTINEZ,) Case No. LA CV 15-5399 DSF (JCG)
Petitioner,
v.
K. SANTORO, Warden,
Respondent.) **ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE AND
DENYING CERTIFICATE OF
APPEALABILITY**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate Judge’s Report and Recommendation (“R&R”), [Dkt. No. 27], Petitioner’s Objections to the Report and Recommendation (“Objections”), [Dkt. No. 32], and the remaining record, and has made a *de novo* determination.

Petitioner’s Objections reiterate the same arguments made in the Petition and the Traverse, and lack merit for the reasons set forth in the R&R.

Accordingly, IT IS ORDERED THAT:

1. The Report and Recommendation is approved and accepted;
2. Judgment be entered dismissing this action with prejudice; and
3. The Clerk serve copies of this Order on the parties.

Additionally, for the reasons stated in the Report and Recommendation, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of appealability.

Nor is Petitioner entitled to an evidentiary hearing. *See Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011) (AEDPA “requires an examination of the state court decision at the time it was made. It follows that the record under review is limited to the record in existence at that same time *i.e.*, the record before the state court.”)).

5/25/17

DATED: _____

Hale S. Fischer

HON. DALE S. FISCHER
UNITED STATES DISTRICT JUDGE